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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 JOSEPH L. MIZZONI,

16 Plaintiff,

17 vs.

18 STATE OF NEVADA, et al.,

19 Defendants.

20 Case No. 3:15-cv-00499-MMD-WGC

21 **OPPOSITION TO MOTION TO RESPOND
22 TO DEFENDANT'S NOTICE OF
23 ACCEPTANCE OF SERVICE**

24 Defendant, Ira Brannon, by and through counsel, Adam Paul Laxalt, Attorney General of the
25 State of Nevada, and Erin L. Albright, Deputy Attorney General, hereby opposes Plaintiff's Motion to
26 Respond to Defendant's Notice of Acceptance of Service. This opposition is based on the following
27 Memorandum of Points and Authorities and all papers and pleadings on file herein.

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

29 **I. RELEVANT FACTUAL BACKGROUND**

30 On March 2, 2016, Plaintiff, Joseph L. Mizzoni ("Inmate Mizzoni"), filed a Civil Rights
31 Complaint pursuant to 42 U.S.C § 1983 against State of Nevada ex rel Nevada Department of
32 Corrections, C. Smith, Brannon, Lisa Walsh, Baca, McDaniels and Cox. (ECF NO. 5). That same day
33 this Court issued a Screening Order dismissing the State of Nevada ex rel Nevada Department of
34 Corrections with prejudice, dismissing C. Smith, Cox, Walsh, McDaniels and Baca without prejudice
35 and with leave to amend, and allowing the Fourteenth Amendment Due Process claim against
36 Defendant Brannon to proceed. (ECF No. 4 at 9). Inmate Mizzoni was granted thirty (30) days from
37 Defendant Brannon to proceed. (ECF No. 4 at 9). Inmate Mizzoni was granted thirty (30) days from
38 Defendant Brannon to proceed. (ECF No. 4 at 9). Inmate Mizzoni was granted thirty (30) days from

1 the date of the Screening Order to file an amended complaint curing the deficiencies in his complaint.
2 (*Id.* at 10). To cure the deficiencies against C. Smith, Inmate Mizzoni must allege that C. Smith was
3 involved with Inmate Mizzoni's disciplinary proceeding to proceed on a due process claim. (*Id.* at 7).

4 On March 25, 2016, Inmate Mizzoni filed a First Amended Complaint attempting to cure the
5 deficiencies of his complaint. (ECF No. 7). The amended complaint does not allege that C. Smith was
6 involved with Inmate Mizzoni's disciplinary proceeding. (*Id.*)

7 **II. ARGUMENT**

8 Here, this Court dismissed C. Smith without prejudice after reviewing Inmate Mizzoni's initial
9 complaint. (*Id.* at 9). This Court provided Inmate Mizzoni the opportunity to amend his complaint to
10 include allegations that C. Smith personally participated in the disciplinary proceeding. (*Id.* at 7). Inmate
11 Mizzoni failed to allege that C. Smith personally participated in the disciplinary hearing. Since Inmate
12 Mizzoni failed to cure the deficiencies against C. Smith, C. Smith is still dismissed from this instant action.

13 **III. CONCLUSION**

14 Since C. Smith has been dismissed from this instant action, Defendant respectfully requests this
15 Court deny Inmate Mizzoni's Motion to Respond to Defendant's Notice of Acceptance of Service.

16 Dated this 26th day of January, 2017.

17 ADAM PAUL LAXALT
18 Attorney General

19 By: 

20 ERIN L. ALBRIGHT
21 Deputy Attorney General
22 Bureau of Litigation
23 Public Safety Division

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28 *Attorneys for Defendant*

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 26th day of January, 2017, I caused to be deposited for mailing a true and correct copy of the foregoing, **OPPOSITION TO MOTION TO RESPOND TO DEFENDANT'S NOTICE OF ACCEPTANCE OF SERVICE**, to the following:

JOSEPH L. MIZZONI #68549
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

An employee of the
Office of the Attorney General